D.B. CIVIL SPECIAL APPEAL (W) NO.628/2006
(Surendra & Ors. Vs. Smt. Kunti & Ors.)

Date of order : 19.9.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. O.P. Mehta, for the appellants.
Mr. Suresh Shrimali }
Mr. Rajsh Choudhary }
Mr. Rajesh Parihar } for respondent-caveator

Having heard learned counsel for the parties, we are of the opinion that no interference is called for in this appeal.

The appellant is challenging the decree passed by the Rent Tribunal as well as by the Rent Appellate Tribunal. The writ petition against which has already been dismissed by learned Single Judge and second appeal is not provided under the Rajasthan Rent Control Act. The appellant seeks to challenge the finding of fact which we shall presently refer to. It is contended by learned counsel that applicant had come before the Tribunal as landlord on the basis of derivative title, hence he was not precluded from challenging his derivative title and no decree could have been passed on that basis.

This contention has been noticed to be rejected. What is required for sustaining a decree of

eviction in the context of the contention raised is whether the tenant has denied the title of the landlord. The law estops a tenant to deny his relationship with the person who has inducted him as tenant as his landlord. May be that such estopple does not come in the way of when a tenant denies the title of a person who claims to be a landlord on the basis of derivative title as successor in interest of original landlord. But ultimately if the landlord's interest vests in the person, he can maintain the suit for eviction and except another rightful claimant proved, the tenant will be liable to be evicted if he denies his title of such suit. But basis for a decree for eviction on the basis of denial of title is not founded on the basis whether the tenant refuses to accept a person claiming title by holding derivation whether by purchase or gift. He is entitled to do so that the title of the property does not vest in the person claiming to be landlord and he cannot step into the shoes of owner. But beyond that no change in law takes place.

In the present case, the plaintiff who is daughter of original landlord is a widow has received the property from his father by a gift deed, the father is landlord. It is not in dispute that the gift is by registered deed and is a result of inter-parties transaction the property vested in plaintiff also cannot be held to be seriously in doubt. What is

contended that the gift deed has been executed only for the purposes of seeking derivative title in favour of the plaintiff, she being the widow and not residing in her matrimonial home. Apparently the burden to prove that the document is sham and not real one rests with the appellant. Moreover, when the petitioner is not claiming herself to be owner, who is challenging the transaction of the gift evidenced by registered deed, he is not entitled to indict the validity of suit property. Therefore, the finding of rejection of the plea that the gift was sham held that Kunti Devi cannot be denied the title and she is the owner of the property. Though the gift, execution of which is not ever disputed, are all finding of fact and it is not open for the appellant to challenge the same nor the same can be said to be perverse. Even if the second appeal was provided, such findings were not challengable. The finding of the Tribunal that the plaintiff is able to prove her bonafide personal necessity considering that she is a widow and she wants to reside in a house given to her by her father, when she is not admittedly residing in her matrimonial home after the demise of her husband, is too a finding of fact and could not be interfered with in exercise of extra ordinary jurisdiction by this Court. There is no force in this appeal. This chance has been taken by the appellant to deprive a widow of her legitimate rights and protract the litigation.

At this juncture, learned counsel for the appellants prays that some time for vacating the premises in question be granted. Learned counsel for the respondents has stated that part of the premises were delivered to the applicant-respondent prior to 14.9.2006. It has also been stated that the tenant has given a written undertaking that the possession of the remaining part of the premises shall be delivered to the applicant Kunti Devi by 10.00 am on 14.9.2006. It is further stated by the learned counsel for the respondents that in pursuance of this undertaking the possession of remaining part too in fact has been taken over by the applicant on 18.9.2006. Learned counsel for the tenant disputes this position.

We are of the opinion that in the facts and circumstances of the case if the learned counsel for the appellant is right in his submission that the tenant has not made the good of his undertaking submitted before the Rent Tribunal, Barmer, he is not entitled to continue in possession in breach of such undertaking. Hence, if the possession of the suit premises has not been delivered to the appellant as per undertaking the same shall be delivered to Kunti Devi free from any encumbrances or liabilities by 20.10.2006, otherwise appropriate action can be taken and proceedings may be initiated against the person, who has committed the breach of the conditions of the undertaking as per the affidavit in accordance with

the law.

Appeal is hereby dismissed.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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